

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Revision of the Commission's Rules to Ensure)
Compatibility with Enhanced 911 Emergency)
Calling Systems)
)
TMP Corp. and TMP Jacksonville, LLC)
Petition for Waiver of Section 20.18(c))
of the Commission's Rules and the)
Deadlines Established in the)
Fourth Report and Order)

CC Docket No. 94-102

To: Chief, Wireless Telecommunications Bureau

PETITION FOR WAIVER

TMP Corp. and TMP Jacksonville, LLC (collectively the "TMP carriers"), by their attorneys, and pursuant to Sections 1.3 and 1.925 of the Commission's Rules,¹ hereby request waiver of Section 20.18(c) of the Commission Rules and the June 30, 2002 deadline for compliance with 911 text telephone ("TTY") obligations for digital wireless carriers.² Waiver is warranted due to the fact that the TMP carriers confront circumstances that will render compliance with the deadline impossible, due to factors

¹ 47 C.F.R. §§ 1.3 and 1.925.

² 47 C.F.R. § 20.18(c) (the "TTY Rule"); *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Fourth Report and Order*, CC Docket No. 94-102, FCC 00-436 (rel. Dec. 14, 2000) ("Fourth Report and Order"). The Fourth Report and Order established a deadline of December 31, 2001 for digital wireless carriers to have obtained all software upgrades and equipment necessary to make their systems compatible of transmitting 911 calls from TTY devices. *Id.* at para. 8. The Commission recognized, however, that some solutions might not be commercially available by that deadline and established June 30, 2002 as the "final deadline." *Id.* at para. 9. Accordingly, to the extent necessary, the TMP carriers also request retroactive waiver of the December 31, 2001 deadline.

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beyond the carriers' control. To further the public interest, the TMP carriers propose a specific deployment schedule based upon representations made by TMP Corp.'s infrastructure provider to implement a TTY solution in the most efficient and expeditious manner.³ Accordingly, the Commission should grant this instant waiver.

I. Background

TMP Corp.'s PCS license covers the Quincy, Illinois-Hannibal, Missouri market (BTA367). TMP Corp. has chosen to implement GSM technology in its network and has selected Airnet as its PCS vendor. TMP Jacksonville, LLC's PCS license covers the Jacksonville, Illinois BTA (BTA213) and utilizes the switch owned and operated by TMP Corp. TMP Corp. began offering wireless service on a commercial basis in November 2001. TMP Jacksonville, LLC began offering service on August 2001.⁴

II. Waiver is Warranted

Grant of waiver of the Commission's Rules is warranted when either

(i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁵

The TMP carriers' waiver request satisfies this waiver standard.

³ Petitioners are aware that analog service is available within the licensed service area. Accordingly, the public would not be harmed by a temporary waiver because alternative access to TTY exists.

⁴ TMP Jacksonville, LLC began service a few months prior to TMP Corp. utilizing TMP Corp.'s switch.

⁵ 47 C.F.R. § 1.925(b)(3).

A. The TMP Carriers Confront Unique and Unusual Circumstances

The TMP carriers depend upon TMP Corp's infrastructure provider, Airnet, and handset manufacturers to make their digital systems compatible with TTY devices. Airnet, however, has informed the TMP carriers that it will not have a technical solution generally available until at least the fourth quarter 2002. Airnet has also informed the TMP carriers that compatible handset availability remains an issue. Accordingly, due to circumstances beyond their control, the TMP carriers will not be able to install technical solutions in their networks by the June 30, 2002 compliance deadline.

It would be inequitable, unduly burdensome and contrary to the public interest to require these small, rural carriers to meet a deadline that, given the existing network architecture, is technically impossible. Small, rural carriers such as petitioners do not have the market power to affect either manufacturer's product development schedules or delivery timetables. Imposing penalties on these carriers for delays resulting from manufacturers' fabrication and installation schedules will not hasten compatibility with TTY devices: it would simply punish the carriers, who are without power to influence the required outcome.⁶

⁶ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Cingular Wireless, LLC, Sprint Spectrum L.P. d/b/a Spring PCS, Verizon Wireless, AT&T Wireless Services, Inc., Nextel Communications, Inc.*, Orders, FCC 01-293, 01-294, 01-295, 01-296, 01-297, 01-299 (adopted Oct. 2, 2001, rel. Oct. 5, 2001), Separate Statement of Commissioner Kathleen Abernathy at p.4. (in the context of enhanced 911 waiver requests, Commissioner Abernathy states, "it is a mistake to equate manufacturer conduct with carrier conduct and to punish one for the acts and omissions of the other").

B. Requiring These Carriers to Meet the Deadline Would Jeopardize the Provision of Service Through Imposition of Technically Infeasible Requirements

Requiring the TMP carriers to meet the June 30, 2002 compliance deadline would frustrate the ability of the carriers to provide service by requiring the carriers to replace their entire network in order to meet the deadline. The Commission has found previously that, in situations where it was not technically feasible to transmit 911 calls through TTY devices, the compliance deadline must be extended. In its decision to delay the 911 TTY compliance deadline for carriers operating digital systems from December 1, 1997 to October 31, 1998, the Commission found that digital handsets and systems require technical solutions that were not currently available to carriers and concluded, “[d]espite our reluctance to delay the implementation deadline for TTY compatibility requirements, we agree with parties that the Commission must also recognize the present existence of technical barriers.”⁷ Further extensions were then granted based upon the absence of a technical solution.⁸ In accordance with this precedent, the Commission must continue to extend its deadline for compliance for carriers where technical solutions have yet to be fully developed and tested.

⁷ *In the Matter of Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Memorandum Opinion and Order*, 12 FCC Red 22665, 22693 (1997).

⁸ *See, e.g.*, Fourth Report and Order at para. 2 (noting that the Commission suspended enforcement of its TTY Rule for carriers operating digital systems until December 31, 1998 and subsequently granted over one hundred temporary waivers of the Rule “which remained pending while the industry worked on a solution”).

C. Grant of the Waiver Would Further the Public Interest

Grant of the waiver would be in the public interest. The TMP carriers are not requesting a blanket waiver of the Commission's TTY Rule but rather requesting waiver only to the extent that these requirements cannot be accomplished in a technically feasible way. Accordingly, the TMP carriers seek an extension of the deadline until June 30, 2003 to allow the carriers to implement a TTY solution in the most efficient and expeditious manner.⁹ During the temporary extension period, the TMP carriers would continue to submit quarterly progress reports to keep the Commission apprised of progress towards compliance.

Based upon the representations made by Airnet, the TMP carriers seek a one-year extension of the TTY Rule. Such an extension would allow time for Airnet to complete product testing, and for the TMP carriers to install and test the TTY solution in their networks.¹⁰ Further, the extension would allow the TMP carriers to budget properly for the additional costs that will be incurred. Airnet has only recently provided the TMP carriers with the estimated cost of its solution, which may exceed \$190,000 if the TMP carriers expand their systems as projected.

⁹ Further, the public would not be harmed by grant of such relief due to the fact that individuals with speech or hearing disabilities could continue to use TTY devices with wireless telephones in an analog mode.

¹⁰ See Fourth Report and Order at para. 8 (Commission recognizing that "a number of things must be done to ensure the solution works properly within a digital wireless system" once the solution is made generally available and allowing for an additional six months to integrate, test and deploy the technology).


III. Conclusion

Unique and unusual circumstances render the TMP carriers' ability to meet the June 30, 2002 compliance deadline impossible, due to factors beyond their control. Imposition of a rule that is technically impossible for these carriers to meet would be inequitable, unduly burdensome and contrary to the public interest. To advance the public interest, the FCC should extend the deadline for the TMP carriers to comply with the TTY requirements until June 30, 2003.

Respectfully submitted,

**TMP CORP.
TMP JACKSONVILLE, LLC**

By:


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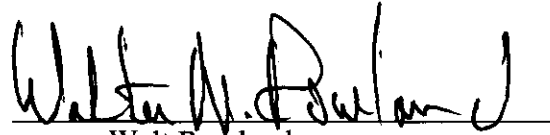
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June 4, 2002

DECLARATION OF WALT ROWLAND

I, Walt Rowland, President of TMP Corp. and TMP Jacksonville, LLC, do hereby declare under penalty of perjury that I have read the foregoing Petition for Waiver and that the facts stated therein are true and correct, to the best of my knowledge, information and belief.


Walt Rowland

Dated: June 3, 2002

CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Petition for Waiver" was served on this 4th day of June 2002, via hand delivery to the following parties:



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